

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

2014 NOV 19 PM 4:08

DEPUTY CLERK

NT

U.S. Bank National Association, as §
Trustee, successor-in-interest to Bank of §
America, N.A., as Trustee for the §
Registered Holders of Wachovia Bank §
Commercial Mortgage Trust, §
Commercial Mortgage Pass-Through §
Certificates, Series 2006-C23, by and §
through CWC Capital Asset Management §
LLC, solely in its capacity as Special §
Servicer, §

Appellant, §

v. §

Case No.

3-14CV4130-N

NNN 3500 Maple, LLC; NNN 3500 §
Maple 1, LLC; NNN 3500 Maple 2, §
LLC; NNN 3500 Maple 3, LLC; NNN §
3500 Maple 4, LLC; NNN 3500 Maple 5, §
LLC; NNN 3500 Maple 6, LLC; NNN §
3500 Maple 7, LLC; NNN 3500 Maple 8, §
LLC; NNN 3500 Maple 9, LLC; NNN §
3500 Maple 10, LLC; NNN 3500 Maple §
11, LLC; NNN 3500 Maple 12, LLC; §
NNN 3500 Maple 13, LLC; NNN 3500 §
Maple 14, LLC; NNN 3500 Maple 15, §
LLC; NNN 3500 Maple 16, LLC; NNN §
3500 Maple 17, LLC; NNN 3500 Maple §
18, LLC; NNN 3500 Maple 20, LLC; §
NNN 3500 Maple 22, LLC; NNN 3500 §
Maple 23, LLC; NNN 3500 Maple 24, §
LLC; NNN 3500 Maple 25, LLC; NNN §
3500 Maple 26, LLC; NNN 3500 Maple §
27, LLC; NNN 3500 Maple 28, LLC; §
NNN 3500 Maple 29, LLC; NNN 3500 §
Maple 30, LLC; NNN 3500 Maple 31, §
LLC; NNN 3500 Maple 32, LLC; NNN §
3500 Maple 34, LLC; NNN 3500 Maple §
35, LLC; and Building and Land §
Technology Corp., §

Appellees. §

EXPEDITED MOTION FOR STAY AS A MATTER OF RIGHT PENDING APPEAL

Pursuant to Federal Rule of Civil Procedure 62, as incorporated by Federal Rule of Bankruptcy Procedure 7062, U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee for the Registered Holders of Wachovia Bank Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2006-C23 (the “Trust”), by and through CWCapital Asset Management LLC, solely in its capacity as Special Servicer, hereby files this motion (the “Motion”) for a stay of (i) the Order Granting the Defendants’ Motion for Summary Judgment, or, In the Alternative, Motion to Disburse Funds (the “Order Granting Defendants’ MSJ”, [Adv. Pro. Docket No. 70],¹ entered by the Bankruptcy Court on November 5, 2014; (ii) Order Denying the Plaintiff’s Motion for Summary Judgment (the “Order Denying Plaintiff’s MSJ”), [Adv. Pro. Docket No. 71], entered by the Bankruptcy Court on November 5, 2014; and (iii) Order Denying (I) Motion to Alter or Amend Order Granting the Defendants’ Motion for Summary Judgment and (II) Expedited Motion for Stay (the “Order Denying Motion to Amend” and, together with the Order Granting Defendants’ MSJ and the Order Denying Plaintiff’s MSJ, the “Orders”), [Adv. Pro. Docket No. 84], entered by the Bankruptcy Court on November 18, 2014 in the Interpleader Action.

Pursuant to the Order Granting Defendants’ MSJ, the Bankruptcy Court ordered the Trust to turnover \$9,619,719.05 (the “Proceeds”) to the Debtors² disbursing agent by today,

¹ “Adv. Pro. Docket No.” means the docket maintained by the United States Bankruptcy Court for the Northern District of Texas (the “Bankruptcy Court”), Adversary Proceeding Number 14-03068 (the “Interpleader Action”).

² The “Debtors” are, collectively, (i) NNN 3500 Maple 1 LLC, (ii) NNN 3500 Maple 2, LLC, (iii) NNN 3500 Maple 3, LLC, (iv) NNN 3500 Maple 4, LLC, (v) NNN 3500 Maple 5, LLC, (vi) NNN 3500 Maple 6, LLC, (vii) NNN 3500 Maple 7, LLC, (viii) NNN 3500 Maple 10, LLC, (ix) NNN 3500 Maple 12, LLC, (x) NNN 3500 Maple 13, LLC, (xi) NNN 3500 Maple 14, LLC, (vii) NNN 3500 Maple 15, LLC, (xiii) NNN 3500 Maple 16, LLC, (xiv) NNN 3500 Maple 17, LLC, (xv) NNN 3500 Maple 18, LLC, (xvi) NNN 3500 Maple 20, LLC, (xvii) NNN 3500 Maple 22, LLC, (xviii) NNN 3500 Maple 23, LLC, (xix) NNN 3500 Maple 24, LLC, (xx) NNN 3500 Maple 26, LLC, (xxi) NNN 3500 Maple 27, LLC, (xxii) NNN 3500 Maple 28, LLC, (xxiii)

November 19, 2014. The Trust timely filed a motion to alter or amend the Order Granting Defendants' MSJ, which the Bankruptcy Court denied at 5:09 p.m. central time on November 18, 2014. The Trust immediately filed a Notice of Appeal, [Adv. Pro. Docket No. 85], an Expedited Motion for Stay as a Matter of Right Pending Appeal ("Motion for Stay"), [Adv. Pro. Docket No. 86], and a Motion for an Expedited Hearing on the Motion for Stay, [Adv. Pro. Docket No. 87], on November 18, 2014. On November 19, 2014, the Bankruptcy Court, without hearing, denied the Motion for Stay. Accordingly, the Trust is filing this Motion seeking entry of a stay as a matter of right pending its appeal of the Orders.

Because the Orders appealed from are the equivalent of money judgments, the Trust is entitled to a stay as a matter of right, pending the Trust's posting of appropriate security. In this case, because the Trust is holding the funds subject to turnover, appropriate security will be provided if the Trust deposits the funds in an escrow account pending further order of this Court.

Alternatively, the Trust is entitled to a discretionary stay pursuant to Federal Rule of Bankruptcy Procedure 8005 because, as established in the concurrently filed Brief in Support of Expedited Motion for Stay as a Matter of Right Pending Appeal ("Brief in Support"), (i) the Trust is likely to succeed on the merits of its appeal; (ii) the Trust will suffer irreparable injury if the stay is not granted; (iii) the stay will not substantially harm other parties; and (iv) the public interest, to the extent implicated, is served by granting the stay.

This Motion is supported by the concurrently filed Brief in Support and the Appendix.

WHEREFORE, the Trust requests that the Court enter an order (i) granting the stay effective immediately; (ii) directing the Trust to deposit the Proceeds in an escrow account

NNN 3500 Maple 29, LLC, (xxiv) NNN 3500 Maple 30, LLC, (xxv) NNN 3500 Maple 31, LLC, (xxvi) NNN 3500 Maple 32, LLC, and (xxv) NNN 3500 Maple 34, LLC.

pending further order of this Court as security for the stay; and (iii) granting the Trust such other and further relief as is appropriate under the circumstances.

Respectfully submitted: November 19, 2014.

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*Attorneys for CWC Capital Asset Management LLC,
solely in its capacity as Special Servicer for the
Trust*

LBR 8005.1 CERTIFICATE

The Trust is requesting a stay of, among others, the Order Granting Defendants' Motion for Summary Judgment, which, if not stayed, requires the Trust to turnover \$9,619,719.05 to the Debtors' disbursing agent today. As set forth in the above motion, the Trust filed an Expedited Motion for Stay as a Matter of Right in the Bankruptcy Court on November 18, 2014. On November 19, 2014, the Bankruptcy Court informed counsel for the Trust that it was reviewing the Motion for Stay. In light of the impending deadline, at approximately 1:00 p.m. central, undersigned counsel contacted the Bankruptcy Court to determine if a ruling would issue a ruling. At approximately 2:30 p.m. central, the Bankruptcy Court informed the undersigned that it was reviewing the Motion for Stay and responses thereto and was considering its ruling, but did not know if a ruling would issue today. Accordingly, although the Trust has diligently sought the stay in the Bankruptcy Court, the Trust has been unable to have its request heard and is seeking relief in this Court.

/s/ Catherine Guastello Allen
Catherine Guastello Allen

CERTIFICATE OF CONFERENCE

Prior to filing this motion, contacted counsel for each of the Appellees via email to determine whether they consented to the relief requested in the motion. The Trust did not receive responses prior to filing this motion.

/s/Catherine Guastello Allen
Catherine Guastello Allen

CERTIFICATE OF SERVICE

I certify that on November 19, 2014, a copy of the foregoing was served via first class mail and/or email to the parties identified on the attached service list.

/s/ Tanya D. Henderson

Tanya D. Henderson

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

U.S. Bank National Association

DEFENDANTS

NNN 3500 Maple, LLC, et al.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Tanya D. Henderson, Perkins Coie LLP

500 N. Akard St., Suite 3300, Dallas, TX 75201

(214) 965-7706

Attorneys (If Known)

See the attached for list of Defendants and their attorneys

3-14CV4130-N

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 158Brief description of cause:
Appeal from bankruptcy court

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED PENDING OR CLOSED CASE(S)

IF ANY

(See instructions):

JUDGE Hale

DOCKET NUMBER 13-30402-hdh-11

DATE

11/19/2014

SIGNATURE OF ATTORNEY OF RECORD

s/ Tanya D. Henderson

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or a similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

Attorney Signature. Date and sign the civil cover sheet.

Attachment to Civil Cover Sheet -

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